

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH NICKOLS,

Appellant.

No. 39245-3-II

UNPUBLISHED OPINION

Penoyar, A.C.J. — Joseph Nickols appeals his conviction for felony harassment, arguing that: (1) the prosecutor committed misconduct by misleading him as to the identity of the claimed victim; (2) the information failed to allege an essential element of the crime, namely that the person threatened was placed in reasonable fear that the threat would be carried out; and (3) the trial court erred in refusing to give a lesser-included instruction for misdemeanor harassment. The State denies that it committed misconduct but concedes that the information was defective, *see State v. Gill*, 103 Wn. App. 435, 441-42, 13 P.3d 646 (2000), and that the trial court should have given the lesser-included instruction. We accept the State’s concessions, reverse Nickols’s conviction and remand for further proceedings. We need not address Nickols’s prosecutorial misconduct argument.

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A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but that it will be filed for public record. RCW 2.06.040.

Penoyar, A.C.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.